

REMARKS

Claims 1-14 and 28-37 are currently pending in this application. Claims 38-45 which depend from claim 1, were previously presented in applicant's response (mailed March 26, 2004) to the Restriction Requirement which was mailed March 15, 2004. Applicant therefore respectfully requests entry of claims 38-45.

In the outstanding Office action dated June 9, 2004 claims 1-3, 5, 6, 9-14 and 28-34 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent 6,480,743 to Kirkpatrick et al. Reconsideration is respectfully requested in light of the following remarks.

Declaration To Swear Behind Kirkpatrick et al.

Applicant respectfully submits that the material cited by the Examiner in rejecting claims 1-3, 5, 6, 9-14 and 28-34 was first disclosed in the application that eventually issued as U.S. Patent 6,480,743 to Kirkpatrick et al. Therefore, the earliest priority date that this information is entitled to is the filing date of U.S. Patent 6,480,743, namely September 24, 2001.

Submitted herewith is a declaration of the inventor of the subject matter of the pending Application, swearing behind the effective priority date of the Kirkpatrick et al. reference. Accordingly, Kirkpatrick et al. does not qualify as prior art under 35 U.S.C. §103(a). Therefore, it is respectfully submitted that the rejections based on the Kirkpatrick et al. reference are moot.

PATENT

In light of the above remarks and accompanying declarations, it is respectfully submitted that the application is in condition for allowance, and an early notice of allowance is respectfully requested.

Respectfully submitted,

8-5-04
Date

Peter A. Nichols
Peter A. Nichols
Registration No. 47,822
Attorney for Applicant(s)

Enclosure: (1) Declaration Under 37 CFR 1.131

Please associate the correspondence address for the above-identified application to
CUSTOMER NUMBER: 36802.